

BOARD OF ADJUSTMENT

EXCEPTIONAL PRACTICAL DIFFICULTY STANDARD APPLIED TO AREA/DIMENSIONAL VARIANCES

The Board must find from sufficient evidence in the record that:

1. Variance will not be contrary to public interest.
2. Existence of special conditions.
3. Standard of exceptional practical difficulty.

Kwik-Check (cases): Must consider and discuss each of the following:

- a. Nature of Zone where property lies
- b. Character of uses of immediate vicinity.
- c. Whether removal of the restriction on the applicant's property would seriously affect the neighboring property and its uses
- d. Whether failure to remove the restriction would create exceptional practical difficulty for the owner in relation to his efforts to make normal improvements in the character of that use of the property which is a permitted use under the use provisions of the ordinance

Consider:

- a. The requested dimensional change is minimal.
 - b. The harm to the applicant with denial is greater than the probable effect on neighboring properties if granted.
 - c. Difficulty must be practical not theoretical.
 - d. Difficulty must be exceptional not routine.
4. Spirit of Zoning Ordinance observed by grant/denial of variance.
 5. Substantial justice done.
 6. Exceptional practical difficulty factors for weighing:
 - a. whether the variance application is pre- or post-difficulty
 - b. economic factor
 - c. self-created
 1. purely personal, unrelated to land
 2. applicant's prior activity created hardship

- 3. error will grant or sanction code violations
- 4. prior grants or denials for similar requests
- d. what are purposes/goals of the regulations (ex. light, air, walkways)
- e. servicing community as a whole
- f. variance should be the minimum necessary to resolve the exceptional practical difficulty found to exist.